

**SHORELINES HEARINGS BOARD
STATE OF WASHINGTON**

FRIENDS OF SEAVIEW, an unincorporated
association,

Petitioner,

v.

PACIFIC COUNTY, STRUCTURAL
INVESTMENTS & PLANNING LLC. and
MATTHEW DONEY,

Respondents.

SHB NO. 05-017

ORDER GRANTING
SUMMARY JUDGMENT

On June 24, 2005, Petitioner Friends of Seaview (“Friends”) filed a petition with the Shorelines Hearings Board (“Board”) for review of a Pacific County Hearing Officer’s June 1, 2005 decision approving a shoreline substantial development permit (SDP), filed with the Department of Ecology on June 7, 2005. The SDP was issued to Structural Investments & Planning LLC (“Structural”) for the construction of a road and development of a residential subdivision located within and across interdunal wetlands lying between the settlement of Seaview and the Pacific Ocean in Pacific County, Washington. Matthew Doney is the authorized agent for Structural. Before the Board is Friends’ Motion for Summary Judgment on the two issues in the case. Board members Bill Clarke, William H. Lynch, Judy Wilson, Pete Philley, and Mary Alyce Burleigh deliberated on the motion. The Board has reviewed and

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1 considered the pleadings and other motion papers contained in the Board record, including the
2 following:

- 3 1. Motion by Friends of Seaview for Summary Disposition and exhibits;
- 4 2. Pacific County Response in Opposition to Motion by Friends of Seaview for
Summary Disposition and exhibits;
- 5 3. Doney/Structural Investments' Response to Motion for Summary Disposition and
exhibits; and
- 6 4. Reply by Friends of Seaview in Support of Summary Disposition.

7 The Board found the record complete and considered the case without oral argument.

8 Based upon the records and files in the case and the submissions of the parties, the Board enters
9 the following decision.

10 **I. BACKGROUND**

11 Structural owns a 35.5-acre parcel of property on the shore of the Pacific Ocean, near the
12 community of Seaview in Pacific County, Washington. Structural has proposed to subdivide its
13 property into four separate lots, three lots of 5.15 to 5.27 acres and a fourth lot, 19.5 acres. Land
Division Application, No. 11, P.¹ Ex. 4.

14 Friends of Seaview is a group of residents and owners of property in the developed
15 community of Seaview who use the ocean dunes and interdunal wetlands in the vicinity of the
16 proposed development for recreation, wildlife observation, and aesthetic enjoyment. They assert
17 that they would be adversely impacted by the residential development from exposure to
18 increased flooding, loss of wetlands and wildlife habitat, and degradation of the aesthetic values
19 of ocean dunes.

21 ¹ Petitioner's exhibits are identified by "P"; Respondents' by "R."

1 The site is within an approximately two-mile stretch of ocean dunes lying to the west of
2 Seaview, extending from North Head to the City of Long Beach, Washington. These ocean
3 dunes remain almost entirely undeveloped. Land Division Application. P.Ex.1. The local
4 administrative hearing process included an engineering shoreline change analysis with projected
5 changes in the shoreline in the vicinity of Structural's proposal. The Pacific Engineering report
6 concluded that the dunes have built up through accretion from sediment contributed by the
7 Columbia River and ocean currents. Although the report stated that, since 1997, this process of
8 accretion has been reversed and the beach has now been eroding at a rate of approximately two
9 to six meters per year since 1997, the Hearing Officer found that the pattern of accretion is
10 continuing at a rate of 2.6 meters per year. Technical Memorandum, P. Exhibit 7; Hearings
11 Officer Finding of Fact 31, Hearing Item No. 33. As a result of this combined accretion and
12 erosion, the proposed lots have an essentially oblong shape, and they have been configured with
13 a short side adjacent to the Pacific Ocean shoreline.

14 Each of the four lots would straddle and be located within three types of shoreline
15 environments, the Natural, Conservancy, and Rural shoreline environments. P.Ex.6. Although
16 the proposed building envelopes would lie east of a shoreline building setback line, Pacific
17 County treated the lots as subject to the regulations of the Rural Environment. Each of the
18 proposed lots includes portions within the rural, conservancy, and natural shoreline environment
19 designations as they are defined in PCSMP Section 2.10.a., b. and c. Hearings Officer
20 Determination, Finding of Fact 8.

1 Pacific County approved Structural's SDP for the construction of four single family houses
2 on Structural's property. The approved short subdivision would divide Structural's 35.5-acre
3 parcel into lots having the following lot areas and widths at the property line nearest highwater:

4 Lot 1: 150 feet wide & 225,204 square feet (5.17 acres) of lot area
5 Lot 2: 150 feet wide & 224,334 square feet (5.15 acres) of lot area
6 Lot 3: 153 feet wide & 229,561 square feet (5.27 acres) of lot area
7 Lot 4: 303 feet wide & 849,420 square feet (19.5 acres) of lot area

8 These lots are oblong in shape. At the south boundary, Parcel 1 is 2,041.85 feet wide east to
9 west, and Parcel 4 at the north boundary is 2,017.80 feet wide. Development Application, Ex.4,
10 Figure 3, Proposed Short Subdivision Plat, P.Ex 1.

11 Much of the site lies below the 100-year flood elevation. Development Application,
12 P.Ex.4, Figure 4. The Hearings Officer found that, although the proposal is within the 100-year
13 floodplain designation, the proposed residential development is in upland areas, and so "[n]o
14 impact to wetlands or wetland buffers from home site construction is anticipated." Finding of
15 Fact No. 21. The Hearings Officer found that the ocean has accreted "many hundreds of feet
16 westward," continuously increasing the building setback from the ordinary high water mark of
17 the Pacific Ocean. Hearings Officer Finding of Fact 21 & 29. The historical accretion has
18 apparently thought to have necessitated the very long oblong lot shapes.

19 **II. ISSUES**

20 The legal issues in this appeal are as follows:

- 21 1. Under the facts of this case, was the approval of the shoreline substantial
development permit issued in conformance with the Pacific County Shoreline
Master Program with respect to lot dimensions?

1 and (c). See also RCW 90.58.140(2)(b). The primary responsibility for implementing the
2 policies enunciated in the SMA rests with local governments, who adopt shoreline master
3 programs consistent with the state program. RCW 90.58.060 *et seq.* Structural's proposal is
4 within the jurisdiction of the SMA and affects a shoreline of statewide significance.

5 The Hearings Officer's eleven Conclusions of Law ("COL") included COL No. 4:

6 The parent parcel is located along the Pacific Ocean, and contains wetlands
7 located within the 100-year floodplain and/or associated with the Pacific Ocean.
8 As a result, portions of the site are located within jurisdiction of the Pacific
9 County Shoreline Master Program. The Pacific Ocean is designated as a
10 Shoreline of Statewide Significance. Aspects of the proposed development (road
11 construction, filling and land clearing activities) constitute substantial
12 development within shorelines jurisdiction. Therefore, a Shoreline substantial
13 Development Permit is required.

14 Motion, Exhibit 9, Administrative Hearings Officer Determination.

15 Friends have argued that Structural's proposal fails to meet both the requirements of
16 Pacific County's SMP and also the goals and policies of the SMA because the County allowed a
17 configuration of lots at the shoreline that was contrary to law. Also, they argue that so much was
18 missing from Structural's SDP application that neither the Hearings Officer nor the Board can
19 determine the project's compliance with shoreline law.

20 **A. Lot Dimensions**

21 By resolution, Pacific County adopted its current Shoreline Master Program ("PCSMP")
on April 11, 2000. It sets forth specific requirements for lot widths at property lines nearest high

1 water. Residential Development is regulated in the PCSMP based on the designated
2 environment in which a development is located.

3 Hearings Officer's Finding of Fact No. 8 was:

4 The project contains the following Shoreline environmental designations:
5 conservancy (the ocean beach, and the area west of the building setback line that
6 has not been designated Natural), Natural (the 100' strip running north and south
7 immediately to the east of the grass line), and Rural (the area between the Urban
8 Growth Area and the Building setback line – the site of the proposed
9 development).

10 The PCSMP disallows residential uses in the designated "natural" environment. PCSMP §
11 11.A.1. The PCSMP does allow residential uses in the "conservancy" and "rural" environments,
12 but provides the minimum widths at the property line nearest the shore.

13 **A. Natural Environment**

- 14 1. Residential uses shall be prohibited on *natural* shorelines.

15 **B. Conservancy Environment**

- 16 1. Multi-family and single-family residences are permitted on conservancy
17 shorelines subject to the following regulations:

- 18 a. Minimum lot width at the property line nearest highwater shall not be
19 less than 75 percent of the square root of lot area or 200 feet,
20 whichever distance is greater....

21 **C. Rural Environment**

1. Subsection 11.B.1. shall apply, except for Subsection 11.B.1.a..

- a. Minimum lot width at the property line nearest high
water shall be not less than 75% of the square root of lot
area or 140 feet, whichever distance is greater....

1 None of the lots proposed by Structural meet the dimensional criteria of the PCSMP, set
2 forth above. Pacific County and Structural have accepted Friends' contention that the proposed
3 plat, as submitted by Structural, does not meet the required lot width-to-depth ratio. Thus, with
4 regard to Issue 1, there is no disputed issue of material fact.

5 After conducting a hearing, the Pacific County Hearings Officer made 65 Findings of
6 Fact, including Finding of Fact 54:

7 The project is consistent with Section 11.B & 11.C of the PCSMP as it relates to
8 residential construction.

9 In conflict with Finding of Fact No. 54 above, is Finding of Fact 50, which finds that the lot
10 widths need to be adjusted:

11 The proposed lot layout does not meet the lot width to depth ratios required within
12 the Pacific County Shoreline Master Program. *Minor adjustments to the lot
13 boundaries will allow for compliance with this section, without altering the road
14 access design, wetland impacts and/or mitigation, or the location of the four
15 proposed development sites.*

16 Motion, Exhibit 9, Administrative Hearings Officer Determination (emphasis added).

17 Regardless, the parties do not dispute that the lot dimension requirements of the PCSMP
18 are not met. They do not agree on whether the adjustment would be fairly characterized as
19 minor. The Board questions whether any adjustment resulting in four shoreline lots that still
20 comply with the requirements of the PCSMP is ever possible. The south boundary line is
21 approximately 2,041.85 feet, and the north boundary line is 2,017.80 feet. Given the PCSMP
formulas for minimum lot widths at the property line nearest highwater in the Conservancy and

1 Rural environments, it appears that it would not be possible for four lots extending to the western
2 property line (the shoreline) to comply mathematically with the dimension requirements.

3 The Hearings Officer approved the proposed short subdivision with nineteen conditions,
4 including Condition No. 13:

5 The lot layout must be redesigned to meet the shoreline Master Program
6 designated formulary lot width to depth ratios in the Final Short Subdivision
7 Mylar. *This will not require a change in the number of lots, or in the location of
8 improvements or the proposed four single family residences. It will, however
9 require some reconfiguration of lot line boundaries. (This change will not
10 materially change the project).*

11 Hearings Officer Determination, Condition No. 13 (emphasis added).

12 Structural and Pacific County argue that the Hearings Officer's requirement that the lots
13 be in conformance with the PCSMP at the time of final plat approval is sufficient. They refer to
14 Pacific County Ordinance No. 149, which contains short subdivision provisions that authorize
15 the imposition of special conditions by the hearing examiner. However, this Board does not
16 have jurisdiction over the County's short subdivision ordinance. At issue here is whether the
17 shoreline substantial development permit complies with the SMA. A substantial development
18 permit may be granted only when the development proposed is consistent with the applicable
19 master program adopted or approved for the area, in this case, the PCSMP. RCW 90.58.140.
20 WAC 173-27-150. Plainly, Structural's project proposal is not in compliance with the lot
21 dimension provisions of the PCSMP.

In prior decisions, this Board has taken an approach that has allowed permit applicants
and local governments some flexibility in the level of detail required in an application. Such

1 flexibility, however, still carries with it the requirement that permit applications contain
2 information and drawings that are adequate to provide the jurisdiction with an informed basis for
3 making a decision on the consistency of the proposal with the SMA and the local SMP. *Hammer*
4 *v. Kitsap County et al.* at 22, SHB 85-17 (1986). Further, this Board has held that a promise to
5 comply in the future is not a lawful approach under the SMA. *Citizens to Save Pilchuck Creek v.*
6 *Skagit County and Ecology*, SHB No. 98-004 (1999). Applying these principles to this case, the
7 Board concludes that a condition requiring the applicant to reconfigure the project in the future
8 prevents the local government, interested parties, and the Board from reviewing whether the
9 project complies with the SMP and SMA.

10 The local subdivision approval process is not a substitute for shoreline review. The
11 process for final subdivision approval does not involve public review. Section 4.D. of Pacific
12 County Ordinance 149 (Pacific County's Land Division Ordinance) includes in its approval
13 criteria for preliminary short subdivision compliance with the PCSMP. That can only be
14 accomplished at the preliminary short subdivision review stage. The short subdivision section of
15 Ordinance 149 does not provide for any public process at the final plat approval stage. When an
16 applicant believes that the requirements of preliminary short subdivision approval have been
17 met, the applicant must only submit a letter delineating how all of the preliminary short
18 subdivision requirements have been met, and, upon administrative determination that the final
19 short plat and improvement plans are compliant, the County Engineer and Administrator shall
20 sign the final short plat. The approval becomes effective once the short plat and supporting
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documents are filed with the County Auditor and all fees and property taxes are paid. Pacific County Ordinance 149 Section 4.E.13, 14 and 15.

The Board concludes that the approval of the shoreline substantial development permit did not conform to the requirements of PCSMP with respect to lot dimensions, and that a condition requiring the project to be reconfigured in the future prevents meaningful review. Also, it appears that there is no mathematical possibility that four lots could conform in their present configuration. These reasons alone support the Board's conclusion that it should vacate Structural's SDP. The shoreline substantial development permit being reviewed in this case significantly fails to comply with the PCSMP. Therefore, the Petitioner's motion for summary judgment is granted. But in light of the extent of the application's other deficiencies, the Board addresses Issue 2 as well to provide guidance to any further local permit review of this project.

2. Application Completeness

The Respondents are reminded that in order for this Board to uphold the decision to issue a shoreline substantial development permit, the application must be complete and sufficiently detailed. Without ruling on the merits of Legal Issue No. 2, the Board notes that the record in this case that was presented to the Board to date causes concern with the adequacy of information as to a site development plan with elevation drawings to scale, dimensions and locations of proposed structures and septic facilities, and the source and destination of fill materials, as required by WAC 1783-27-180.

Permit applications must contain sufficient detail to enable meaningful review for consistency with chapter 90.58 RCW and the implementing regulations. The Washington

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1 Supreme Court has approved this Board's vacation of a substantial development permit issued by
2 a county where the permit failed to describe the proposed use in sufficient detail. *Hayes v.*
3 *Yount*, 87 Wn.2d 280, 552 P.2d 1038 (1976). The PCSMP requires that applications for
4 substantial development permit conform to WAC 173-27-180 PCSMP §24.C.5. WAC 173-27-
5 180 was promulgated by the Department of Ecology to implement the SMA for shoreline
6 development permit applications. There is no dispute that Structural submitted a development
7 application for a Shoreline Substantial Development Permit to Pacific County on July 21, 2004
8 that was missing certain specifics. Friends argues that Structural's application either lacked all or
9 part information on eight critical application elements. Motion, Exhibit 4, Figures 1-7 and View
10 Analysis. Structural argues that sufficient information is contained in the overall record. The
11 Board agrees that the application was deficient as to several necessary elements and is
12 particularly concerned with the inadequate information as to a site development plan with
13 elevation drawings to scale, dimensions and locations of proposed structures and septic facilities,
14 and the source and destination of fill materials.

15 The application requirements for shoreline permits are found in WAC 173-27-180, and
16 these requirements have been incorporated into the PCSMP. Compliance with the SMA includes
17 compliance with Ecology regulations implementing the Act. *Buechel v. Ecology*, 125 Wn.2d
18 196, 205, 884 P.2d 910 (1994). WAC 173-27-180 requires as that "[a] complete application for
19 a substantial development, conditional use, or variance permit shall contain, **as a minimum**, the
20 following information as to each of these missing elements:

1 **Site development plan with elevation drawings, dimensions and locations of**
2 **structures and septic facilities:**

3 A site development plan consisting of maps and elevation drawings, drawn to an
4 appropriate scale to depict clearly all required information, photographs and text
5 which shall include...the dimensions and locations of all existing and proposed
6 structures and improvements including but not limited to: buildings, paved or
7 graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or
8 surcharge, and stormwater management facilities.

9 WAC 173-27-180(9)(f).

10 **Identification of the source of fill material and identification of the destination of**
11 **excavated materials**

12 Quantity, source and composition of any fill material that is placed on the site
13 whether temporary or permanent. WAC 173-27-180(9)(i).

14 Quantity, composition and destination of any excavated or dredged material.
15 WAC 173-27-180(9)(j)

16 The Board's review of the record in this case finds virtually no information on these
17 critical aspects of the SDP application. Structural argues that its application covers the "typical"
18 structure. "Typical" does not meet the level of detail required for review of a substantial
19 development permit. The Board uses the harmless error standard in reviewing the completeness
20 of a shoreline development application. *McNeal, et al. v. Douglas County et al.*, SHB 04-002
21 (2004). In some cases, this Board has found an incomplete application to be harmless where the
22 Board can review a project under a *de novo* standard of review and find the detail provided in the
23 shoreline development application materials sufficient. See, for example, *Sahlin et al. v. City of*
24 *University Place, et al.*, SHB 03-024 (2004). When an application is complete enough to allow a
25 conclusion that the proposal meets the local master program and SMA, it's incompleteness can
26 be deemed harmless. Structural argues that the information that should have been in the SDP

1 application could be gleaned from other material submitted documents connected to other
2 permits for the project. While an application or decision for an SDP may incorporate other
3 documents that include information about the project relevant to whether it complies with the
4 applicable SMP and SMA, that is not the case here.

5 Friends have the burden of proof in challenging the validity of the issuance of this SDP
6 and establishing that it was in error. RCW 90.58.140(7). Friends has met that burden. The lot
7 dimensions of the proposal do not comply with the PCSMP. It is not permissible to leave review
8 of the lot dimensions revisions of the scale that would be necessary in this case (along with other
9 necessary changes) up to the final plat approval process. The Board also concludes that the
10 application for this SDP lacked the sufficient crucial detail that could reasonably support a
11 conclusion that the project was in conformance with the SMA. While this Board has been
12 flexible in reviewing development applications, it has stated that “[e]ffective operation of the
13 permit review process, as well as enforcement of the SMA, demands that shoreline permits be
14 complete in themselves and contain sufficient detail to enable the local government and the
15 board to determine consistency with the policies set forth in the SMA, implementing regulations
16 and Shoreline Master Programs.” *Luce et al. v. City of Snoqualmie et al.* SHB 00-034 (2001). In
17 this case, not only the proposed project’s non-compliance with the PCSMP lot dimension
18 requirements, but also the development application’s incompleteness as to important components
19 dictate the reversal of Pacific County’s SDP approval.

20 Based upon the foregoing analysis the Board enters the following:

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ORDER

Petitioner Friends of Seaview's Motion for Summary Judgment is GRANTED and Pacific County's approval of the Shoreline Substantial Development Permit on Development Permit Application No. 10112841189, SSDP #04-0066LB is hereby VACATED.

Done this 19th day of October 2005.

SHORELINES HEARINGS BOARD

Bill Clarke, Chair

William H. Lynch, Member

Mary Alyce Burleigh, Member

Peter Philley, Member

Judy Wilson, Member

Cassandra Noble
Administrative Appeals Judge